

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DATTA DOUGHERTY,
Plaintiff

vs.

BSI FINANCIAL SERVICES, INC.
and US BANK NATIONAL
ASSOCIATION
Defendants.

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Civil Action No. 4:19-cv-03408

DEFENDANTS' MOTION TO DISMISS

NOW COMES, Defendants BSI FINANCIAL SERVICES, INC. (“BSI”) and U.S. BANK AND TRUST NATIONAL ASSOCIATION, AS TRUSTEE OF THE IGLOO SERIES III TRUST (“U.S. Bank”) and pursuant to Federal Rules of Civil Procedure 12(b)(6) file this, their Motion to Dismiss in the above styled and numbered cause. For the reasons set forth in the brief filed, Defendants are entitled to an order dismissing all of the claims and causes of action of Plaintiff in the instant case.

SUMMARY

Federal Rule of Civil Procedure 12(b)(6) authorizes the dismissal of a complaint that fails “to state a claim upon which relief can be granted.”

“Conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss.” *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002). A formulaic recitation of the elements, because of its conclusory nature, is not entitled to the usual presumption of truth. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1951 (2009).

A plaintiff must instead plead facts, and those facts “must be enough to raise a right to relief above the speculative level.” *Bell Atlantic v. Twombly*, 127 S. Ct. 1955, 1964–65 (2007). A

complaint must offer more than an “unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 129 S. Ct. at 1949. A complaint cannot simply “le[ave] open the possibility that a plaintiff might later establish some ‘set of [undisclosed] facts’ to support recovery.” *Twombly*, 550 U.S. at 561 (citation omitted). Courts will not assume that a plaintiff can prove facts beyond those alleged in the complaint. *See Assoc. Gen. Contractors of Cal. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

Because Plaintiffs have not stated any plausible claim for relief, Defendants are entitled to an order dismissing, with prejudice, Plaintiffs’ claims for (1) declaratory judgment; (2) breach of the duty of good faith and fair dealing; (3) breach of contract; (4) violation of consumer protection, false advertising and unfair and deceptive acts and practices; (5) violation of Respa and Regulation X; (6); injunctive relief and (7) attorney’s fees.

CONCLUSION

Plaintiff’s allegations do not give rise to a plausible cause of action against the Defendants. Even if all facts alleged by Plaintiff are assumed true, no viable cause of action exists against the Defendants as Plaintiff has not pleaded “enough facts to state a claim to relief that is plausible on its face.” *Twombly*, 550 U.S. at 570. As such, Plaintiff’s claims against Defendants in the instant case should be dismissed with prejudice.

PRAYER

Based upon the reasons set forth herein and, in the brief filed by Defendants to support this motion, Defendants request that the court dismiss all of Plaintiff’s claims and causes of action in the instant case with prejudice and further requests any additional relief in law or equity to which they may be entitled.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this the 28th day of October 2019, a true copy of the above document has been delivered in person to the following pursuant to the Federal Rules of Civil Procedure for each party listed below.

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By: /s/ Ray L. Vela .
RAY L. VELA